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Summary record of the 2345th meeting
Held at Headquarters, New York, on Thursday, 16 March 2006, at 10 a.m.

Chairperson: Ms. Chanet

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Third periodic report of the Democratic Republic of the Congo (*continued*) (CCPR/C/COD/2005/3, CCPR/C/COD/Q/3)

1. *At the invitation of the Chairperson, the delegation of the Democratic Republic of the Congo took places at the Committee table.*

2. **The Chairperson** invited the delegation to continue to address the questions put at the previous meeting by members of the Committee in connection with its replies to questions 1 to 13 of the list of issues (CCPR/C/COD/Q/3).

3. **Ms. Kafala** (Democratic Republic of the Congo) said that those who tried to practise customs that were contrary to national legislation or to the international treaties ratified were prohibited and were prosecuted. A law reform commission had made an inventory of all the unacceptable civil provisions based on customary law that had originally been incorporated into the Family Code, with a view to abolishing them — an indication of the Government's firm position on the matter.

4. It was also endeavouring to improve the situation of women, many of whom were still forcibly being denied their rights, especially in rural areas. The legal status of married women under the Family Code was a particular problem: once the provision regarding the legal incapacity of women was abrogated, a revision of the other provisions discriminatory to women would follow, and the Family Code would be in line with international law. The Ministry of Social Affairs, Status of Women and the Family had adopted a gender mainstreaming policy and there were gender focal points in all ministries. Among its many advocacy and consciousness-raising activities, the Government had broadly publicized the need to change the legal status of married women, and also the bill against sexual violence pending before the Assembly. A hopeful sign was that one court in Bukavu had issued a judgement recognizing a woman's rights as set out in the human rights treaties. So few women served in the Parliament that improvements on that score should not realistically be expected soon.

5. As to women's health, a network of maternal and child health care centres had been set up to implement the Government's comprehensive family planning programme and its multisectoral programme to combat AIDS. There were also centres for sexually abused women and women with AIDS. The enslavement of girls was another real problem and, since poverty hit women the hardest, there was large-scale prostitution as well. Such women needed to be rehabilitated and given some social standing. The particularly scandalous sexual abuse committed, thus far with impunity, by United Nations peacekeepers had to be dealt with; the Government was trying to find a way of bringing the perpetrators back so that they could be tried in court. One centre alone housed 300 mixed-race children of young girls who had been thus raped and who were entitled to reparation.

6. With the entire judicial system in shambles after the war, the Government had had to turn to the International Criminal Court in The Hague for help in investigating the more egregious crimes committed since 2002 by persons currently living with impunity in the country. Gradually, however, the national court system was being reconstituted and, though not yet procedurally ideal, some trials had been held. The 315 judges about whom the Committee had inquired had been reinstated and had received compensation. Since 2004, after sufficient evidence had been gathered, there had been some convictions of public officials and members of the armed forces who had committed human rights violations. There had also been documented cases of extortion or other misconduct by officials and of police violence or arbitrary arrests by overzealous officers, and the Government immediately referred any cases that came to light to the appropriate ministry for prosecution. Police offences came under the jurisdiction of the military courts, and the Military Judicial Code and Military Criminal Code were currently being revised to cover such crimes.

7. There was as yet no definition of torture in the Penal Code, but a bill was before Parliament that would bring it into line with the Covenant in that respect. It had unfortunately been necessary to lift the moratorium on the death penalty in order to deal with the disorder during the war. The hope was, however, to re-establish the moratorium and eventually even abolish the death penalty. Although public demonstrations were permitted under the law, the

precariousness of the situation in the country required official authorization in each instance.

8. The Government made every effort to trace disappeared persons, but often the information given had been too imprecise; it was also not uncommon for persons to be said, with the complicity of their families, to have disappeared so that they could get asylum elsewhere. No data on the number of the disappeared was currently available.

9. There were over one and one-half million displaced persons in the country. Since events like those that had occurred in the east after 2004 could not be predicted, the Government could not take steps to avoid displacement in advance; it had to work to pacify the entire country and establish civilian evacuation programmes when necessary, although the aim was always to create conditions that would allow people to remain where they were. The Ministry of Social Affairs, Status of Women and the Family and the Ministry of Solidarity and Humanitarian Affairs were in charge of helping the displaced return to their homes, reintegrating them properly and thus enabling them to participate in the forthcoming elections; that programme, however, was short of funds.

10. The committee which had drafted the periodic report had been composed of representatives of all ministries, and thus all had provided their input. If the Government had not fulfilled its reporting obligation for 15 years, it was because of the turmoil and enormous difficulties in the country. Where no information had been provided in relation to communications under the Optional Protocol, it was because the necessary information had to be retrieved from far-flung areas under military occupation. Fuller facts, as requested, would be submitted subsequently in writing. The delegation's presence now before the Committee, in any case, should be taken as a sign of the Government's will to comply with its international obligations and implement the human rights treaties it had freely ratified.

11. **Mr. Glele Ahanhanzo** said that he looked forward to receiving more information in writing about the Bukavu trial and other matters raised by the Committee, and asked for clarification of the action taken by the Ministry of Human Rights in the appeal referred to in paragraph 47 of the report (CCPR/C/COD/2005/3). Had the Ministry of Human Rights acted as a mediator, and how did its action fit in with the role of the Ministry of Justice?

12. **Mr. Ando** said that the Committee, aware of the instability in the country and of the Government's will to improve the human rights situation, did not aim to criticize but was seeking facts on the basis of which it could work with the Government to help it overcome its problems. Education was perhaps the one basic action that the Government could take without international help. Education could change people's thinking and thus their behaviour, leading to an improvement of the human rights situation.

13. **Mr. Amor** said that he would like as complete a picture as possible of the mixed-race children born to young girls who had been raped by foreign soldiers. It was a case that involved non-Congolese responsibilities.

14. **Sir Nigel Rodley** noted that, except in the case of communication No. 933/2000 concerning the judges removed from office, the Committee had not received any replies from the State party in response to its communications, before, during or since the conflict, even to say that cases were being considered or investigated further. Surely the communications had been received. He hoped that, in future, the Committee would be able to count on the cooperation of the State party. He was also interested in knowing the status of the draft legislation on torture which had been before the Parliament for some two years. It was high time torture was criminalized; that would not solve the problem overnight, but it would be a start.

15. **Mr. Bhagwati** welcomed the appearance before the Committee of the delegation of the Democratic Republic of the Congo, since it was a sign that the country was finally emerging from a long and difficult period of conflict. He understood that article 14 of the new Constitution dealt with the elimination of discrimination against women; he wondered whether it allowed scope for positive discrimination or affirmative action and whether such action was contemplated, especially in terms of representation in public bodies or entities. He would also be interested to learn of any legislation in place or contemplated to enforce non-discrimination. The State party might clarify whether primary education was compulsory and provide information on the percentage of girls attending school. He hoped that efforts were being made to combat illiteracy, particularly among girls,

since a real democracy was not possible without education. He understood that the Labour Code prohibited the worst forms of child labour and would like to know how that was defined and if there was any implementing legislation.

16. **The Chairman** invited the delegation to respond to the additional questions posed by Committee members.

17. **Ms. Kalala** (Democratic Republic of the Congo) said that there was no overlap of functions between the Ministry of Justice and the Ministry of Human Rights. The Ministry of Human Rights had a monitoring function with regard to the justice system. It could, for example, visit prisons to observe conditions there. It could also act as an ombudsman and intervene to ensure that human rights were respected. The National Human Rights Observatory also had certain powers to act as an ombudsman. The delegation would provide further written information on how the Covenant was being implemented.

18. Her Government shared the view that education in human rights was essential for changing attitudes. That was why it had launched a programme in 2004 under the United Nations Decade for Human Rights Education, and why, for example, human rights courses had been integrated into the law faculty curriculum. Her Ministry was keenly aware of the need to raise human rights awareness throughout the entire Congolese community. With regard to the low general level of education, it was recognized as a serious problem, the fruit of many years of neglect. Under law, schooling was compulsory but not free of cost.

19. The problem of mixed-race children, and others as well, born to very young girls, evidently as a result of intercourse with foreign soldiers, was a painful one. Discipline had been tightened among MONUC contingents, although there were still occasional violations. In some cases those believed to be responsible had been sent for prosecution to their own countries, where they had received light sentences for what was truly serious sexual abuse of minors. The Democratic Republic of the Congo would like to find a way to prosecute such individuals under its own law so as to obtain compensation for their victims. The country needed the help of the international community to resolve that problem.

20. With regard to the response to the Committee's Views on communications, she would beg for the Committee's indulgence. It might be hard for it to envision the state of chaos, the loss of records, the difficulties of verifying events in certain parts of the country, as well as the enormous weight of the human rights problems her Ministry had to deal with. In perhaps the weightiest case, the 315 judges removed from office had been reinstated and given back pay.

21. It was true that the bill on torture had been nearly two years before the legislature. During that time the Parliament had had to pass all the basic legislation re-establishing the country's governmental and judicial system, reconstituting its armed forces, setting the terms of the amnesty, providing for decentralized administration, determining the rules for elections and other matters of great urgency. It was extremely difficult to address all high-priority issues at once.

22. One of the issues the Government wished to tackle was the elimination of discrimination against women. A key effort was the bill being prepared to amend the Family Code to remove the legal disadvantages of a married woman vis-à-vis her spouse. Another fundamental inequality the Government was addressing was the major educational gap between girls, and boys which was due to family attitudes; there had already been a significant increase in girls' enrolment. There was not yet any affirmative action legislation, although her Ministry would like to see it come about. Article 14 of the Constitution provided for that possibility. Currently, absent a flagrant violation of human rights, there was no established avenue of recourse against discrimination, but efforts were under way to combat more insidious, hidden forms of discrimination in hiring.

23. In order to protect children against the worst forms of child labour, a child protection code was in preparation. Recruitment of children into the armed forces was forbidden and was being combated by the country's armed forces and by MONUC.

24. **The Chairperson** invited the delegation to respond to questions 14 to 21 on the list of issues (CCPR/C/COD/Q/3).

Right to a fair trial (article 14 of the Covenant)

25. **Ms. Kalala** (Democratic Republic of the Congo), referring to question 14, said that the number of judges was indeed inadequate for the size of the country. The Government was attempting to recruit more magistrates. There were no plans to abolish the military

courts at the present time given the need to maintain discipline in the armed forces and the police. However the special military court established in 1997, whose decisions were not open to appeal, had been abolished. The normal military court system had two levels, a trial level and an appeal level.

Right to recognition as a person before the law (article 16 of the Covenant)

26. With reference to question 15, she said that since 2003 the Government had been making serious efforts to encourage civil registration of births, inter alia, by training civil registrars and directors of maternity clinics, decentralizing civil registry services, educating parents about the importance of registering their children and eliminating the penalties for late registration. The results of the campaign would be evaluated in 2006 but were expected to fall short of the goal owing to a lack of resources.

Freedom of thought and expression (article 19 of the Covenant)

27. Turning to question 16, she noted that under the laws of the Democratic Republic of the Congo journalists were free to exercise their profession, provided they showed respect for the laws, public order and the rights of others to privacy. Freddy Monsa Iyaka Duku had been prosecuted for publishing an article about the Vice-President of the Republic that was considered defamatory, whereas Feu d'Or Bonsange Ifonge had been prosecuted for defamation of a business operator, who brought a complaint against him. The Government could not be accused of being repressive when journalists went to excess, as even the President of Reporters Without Borders International acknowledged.

Freedom of assembly and association (articles 21 and 22 of the Covenant)

28. In response to question 17 she said that the Government could not be accused of intimidating human rights defenders. It had condemned the assassination of Pascal Kabungulu, secretary of the League of Human Rights for the Great Lakes Region, and the Ministry of Human Rights was actively involved in seeing to it that the military personnel suspected of killing him were brought to trial. Indeed, the Ministry had intervened on behalf of non-governmental organizations wishing to organize a march protesting Kabungulu's death. N'sii Luanda, chairperson of the Committee of Human Rights Observers, had been released 10 months after entering prison, and was currently fully at liberty and active as a human rights defender. Indeed, he was one of the Ministry of Human Rights' most valuable partners. With regard to events in the eastern part of the country, where government administration was just beginning to be re-established, the Ministry of Human Rights greatly valued reports from NGOs on the ground.

Protection of the family (article 23 of the Covenant)

29. Referring to question 18, she said that article 336 of the Family Code did not authorize forced marriages but in fact provided for criminal penalties for forcing a person to marry against his or her will. Article 351 of the Family Code provided that each of the prospective spouses, whether a minor or not, must personally consent to the marriage in order for it to be valid. A campaign to familiarize citizens with the provisions of the Family Code had been conducted for a year and was still continuing in a more targeted fashion aimed specifically at women and girls. The draft legislation to amend the Family Code would raise the marriage age for girls from 15 years to 18 years of age, as for boys.

Protection of children (article 24 of the Covenant)

30. With regard to question 19 she said that, according to the latest report of the National Commission on Demobilization and Reintegration, more than 16,800 children had, with the help of the Red Cross, been demobilized; many had returned to their families and the others had been reintegrated into school or into the labour market.

31. Turning to question 20 she said that reports of alleged involvement of the Democratic Republic of the Congo in the trafficking of children were false. There were, indeed, large numbers of street children, many of whom became beggars or got involved in criminal activities, but they were gradually either returned to their families or placed in State homes for children. Poverty was a major problem, which led, inter alia, to prostitution among young girls. Measures were being taken to reduce poverty, and that would, in turn, reduce prostitution. Young people were given an opportunity to earn some money cleaning the streets.

Dissemination of information regarding the Covenant (article 2 of the Covenant)

32. On question 21, she said that the report had been drafted by an inter-ministerial committee and circulated to non-governmental organizations for their comments. It would be circulated along with the Committee's concluding observations to the non-governmental organizations and the public at large. The Government was also organizing, with the assistance of the Ministry of Human Rights, training seminars on the implementation of international human rights instruments for judges, officials and the police.

33. **The Chairperson** invited the Committee to pose oral questions on the issues referred to by the delegation.

34. **Mr. Amor** said that the new Constitution contained no clear description of the levels of justice in the country, in particular the status and role of judges. He requested more information on the role of the justices of the peace and on how customary law related to the Constitution. Staffing levels in the courts seemed low for a country of the size and wealth of the Democratic Republic of the Congo. He asked whether there were problems in recruiting and training judges. The number of prisoners also seemed very low for a population of around 60 million. He asked whether prison conditions were such that judges were reluctant to sentence people to imprisonment.

35. **Mr. Johnson López** requested more information on efforts to increase the number of civil registry offices, which were needed for issuing identity documents and passports and for drawing up electoral rolls.

36. **Mr. Khalil** welcomed the provisions of the new Constitution protecting freedom of expression and freedom of the press, both of which were essential for the respect of human rights, and expressed surprise that question 16 had not been more fully answered. There had been many reports — which had been corroborated by various sources — of repression of journalists in the Democratic Republic of the Congo and that had created an atmosphere which was not conducive to the respect of human rights. According to the non-governmental organization *Journalistes en danger* the fact that so many journalists in the country were being prosecuted for breaking the laws governing the press would seem to suggest that the laws should be revised to allow for more criticism.

37. With reference to question 20 dealing with sexual and economic exploitation, he asked whether there had been any prosecutions and convictions in the cases of rape committed by members of the armed forces of the Government and, finally, what measures had been taken to make the police and the general public aware of the rights protected by the Covenant.

38. **Mr. Glele Ahanhanzo** asked, with reference to forced marriage, how the provisions in article 336 of the Family Code, which appeared to exempt the father, mother and guardian from punishment in cases of forced marriage, could be understood to be compatible with the Covenant and requested further information on the extent to which customary law continued to take precedence over the Constitution.

39. **Mr. O'Flaherty** asked what steps were being taken to establish civil registry offices in remote areas, areas still in conflict and in areas with many internally displaced people and to register older children who had missed registration at birth. He requested information about prosecutions of persons who had recruited child soldiers in the past and about the reintegration of child soldiers who had been recruited into non-State groups, in particular whether they were getting equal treatment. With regard to child trafficking, he said that information issued by the United Nations Children's Fund in 2004 suggested that there was solid evidence that the Democratic Republic of the Congo was a source country of such trafficking, although it was less clear that the country was also a transit or destination country. The problem seemed to be regional, involving other countries in the Great Lakes area as well.

40. **Ms. Kalala** (Democratic Republic of the Congo), responding to Mr. Amor's question about judges and the levels of the justice system, said that the new system provided for justices of the peace in all courts of general jurisdiction. Where such a justice could not be appointed, a special judge sitting with assessors was appointed, whose activities were monitored by the regular courts.

41. Replying to Mr. Amor, she said that all criminals were sentenced to imprisonment. While he was right in suggesting that a lack of financial resources was a factor which constrained the recruitment of judges, the situation had recently improved thanks to new legislation, and there were currently 4,000 applicants for such posts.

42. Referring to the comment by Mr. Johnson López regarding the need for more registry offices, she said that special measures were taken to enable people to vote. People who were not able to prove that they were Congolese citizens could be allowed to vote if five persons who were themselves recognized as having the right to vote would vouch for them. Regarding the military courts, she said that while a reform was indeed necessary, for the time being the existing law was being applied.

43. Taking up the question of press freedom raised by Mr. Khalil, she said that, considering the size of the population, the number of journalists who had experienced difficulties in exercising their profession was very small. Freedom entailed responsibility; journalists did not always behave as they should. One had recently admitted to inventing facts about the President. The murder of the journalist Franck Ngyke and his wife had created great consternation in the country. An impartial judicial investigation was currently being conducted into the matter and the President himself had authorized the press to follow it, in the interests of transparency. As for the trafficking and sexual exploitation of children, those things were not taken lightly and perpetrators did not benefit from impunity.

44. She agreed with Mr. Glele Ahanhanzo that no one, not even parents or guardians, should be exempted from the prohibition against forced marriages; accordingly the Family Code needed to be revised. Education about such matters should start at pre-primary level and continue throughout school life. Her ministry had, for its part, launched human rights study sessions for local communities, aimed at raising awareness of the rights of children and the duties of parents, but it had been hamstrung by a lack of resources. In cooperation with the Ministry of Women's Affairs and with the support of a number of women's NGOs, her ministry had also been active in campaigns against polygamy. It was proving difficult, however, to develop resistance against long-accepted practices, even among young women.

45. In reply to the questions put by Mr. O'Flaherty, she stated that steps were being taken to register population groups in remote areas but that, because of the vast size of the country, it was necessary to proceed in stages. Anyone involved in the recruitment of child soldiers was brought before the courts. The children involved were taken in hand and, as far as possible, returned to their place of origin; all such children were treated equally. While there was trafficking of children in Rwanda and Burundi, there was no such activity in her country. She could not respond directly to what had been reported by UNICEF in that connection as she had not been able to study it; she undertook to reply to the Committee in writing on that issue.

46. **The Chairperson**, summing up the discussion, said that since the laws and reforms referred to in the report under discussion were either in the process of being adopted or had only recently come into force, the Committee could not treat them as givens. It would, however, take them into account. The present report (CCPR/C/COD/2005/3) and the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2005/120), seemed to refer to two different countries. The main problem was that the Government did not have control over the whole country and particularly over its own army; crimes were being committed not only by dissident troops but also by loyalist troops and were going unpunished. While efforts were being made to fight impunity, they were more in the nature of future plans than actual achievements. As for the legal incapacity of women, that had to change, but women had to be convinced through education of their own rights, particularly in respect of marriage. She encouraged the Congolese authorities to remove the provision in the Family Code allowing for exceptions to the prohibition against forced marriages and said that it was inconceivable that the Committee's findings should not receive the attention of the authorities in Kinshasa. While journalists and human rights activists might be arrested in accordance with the law, that raised the question whether such laws could be in conformity with the Covenant for according to article 19, thereof, restrictions on the right to freedom of expression had to be in accordance with the principle of proportionality; imprisonment could not be so described. She concluded by saying that if the written information promised by the Minister regarding trafficking of children was not received within eight days, it would be taken into account in the follow-up procedure.

The meeting rose at 12.50 p.m.